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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4274

RIN: 0570-AA86

Intermediary Relending Program

AGENCIES: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) amends its regulations for

the Intermediary Relending Program (IRP). This action is critical to immediately address three major items. First, the Agricultural Act of 2014 incorporates the IRP into the Consolidated Farm and Rural Development Act (Con Act). Therefore the IRP will now be subject to the Con Act, Section 343(a)(13) “rural and rural area” definition. Second, the Agency is making the following changes based on an Office of Inspector General (OIG) audit: removing part of the definition of revolved funds to eliminate public confusion on its applicability; providing stronger guidance on items that should be taken into consideration when approving subsequent loans; defining what is meant by promptly relending collections from loans made from the revolving loan fund account; and providing clarification when prior Agency concurrence is needed to make loans. Finally, the Agency is removing provisions for Rural Development Loan Fund (RDLF) servicing as there are no longer any active RDLF accounts.

DATES: This direct final rule is effective [insert date 90 days after date of publication in the Federal Register], unless RBS receives a written significant adverse comment or written notice of intent to submit a significant adverse comment on any provision other than the definition of “rural or rural area” on or before [insert date 60 days after the date of publication in the Federal Register]. Since the definition of “rural or rural area” is statutory, RBS is unable to change the definition of “rural or rural area” even if significant adverse comments are received.

If RBS receives a significant adverse comment on any provision of this rule other than the definition of “rural or rural area,” we will publish a timely document in the Federal Register informing the public that that provision will not take effect. The rule

provisions that are not withdrawn will become effective on [insert date 90 days after date of publication in the Federal Register], notwithstanding a significant adverse comment on any other provision, unless we determine that it would not be appropriate to do so. Any significant adverse comments will be addressed when RBS issues a final IRP rule to implement the proposed IRP rule that is also being published this date.

ADDRESSES: You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW, Washington, D.C. 20250-0742.

Hand Delivery/Courier: Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW, 7th Floor, Washington, D.C. 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Lori A. Washington, Business Loan and Grant Analyst, Specialty Programs Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW, Washington,

DC 20250-3225, Telephone (202) 720-9815, E-mail lori.washington@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 - Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.767, Intermediary Relending Program.

Executive Order 12372 - Intergovernmental Review of Federal Programs

The IRP is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Rural Development has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," and in 7 CFR part 3015, subpart V.

Executive Order 12988 - Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) all State and local laws and regulations that are in

conflict with this rule will be preempted, (2) no retroactive effect will be given this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This rule has been reviewed in accordance with 7 CFR part 1940, subpart G, “Environmental Program.” Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, Rural Development has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. § 601). Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants. Therefore, a regulatory impact analysis was not performed.

Executive Order 13132 - Federalism

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws.

Rural Development has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the rule is not subject to the requirements of Executive Order 13175. Additionally, on April 17, 2013, Rural Development focused its quarterly webinar and teleconference based Tribal Consultation on its Rural Business Revolving Loan Fund Programs, including the IRP. Neither adverse nor material comments were received regarding the IRP during, or as a result of, that event. Tribal Consultation inquiries and comments should be directed to Rural Development's Native American Coordinator at aian@wdc.usda.gov or (720) 544-2911.

Paperwork Reduction Act

This rule does not revise or impose any new information collection or recordkeeping requirements.

E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

The amendments in this rule immediately allow the Agency to comply with the

Agricultural Act of 2014, which incorporates the IRP into the Con Act and consequently to utilize the Con Act “rural and rural area” definition for the program. Additionally, the amendments will immediately address the OIG audit findings conducted in fiscal year 2010 involving several issues that require strengthening the Agency’s oversight controls of the IRP program. Lastly, the Agency is also removing provisions for RDLF because there are no longer any active RDLF accounts.

If RBS receives a significant adverse comment on a provision of this rule, we will publish a timely withdrawal in the Federal Register informing the public that that provision will not take effect. The rule provisions that are not withdrawn will become effective on the date set out above, notwithstanding a significant adverse comment on any other provision, unless we determine that it would not be appropriate to do so.

List of Subjects

7 CFR Part 1951

Loan programs – Agriculture, rural areas.

7 CFR Part 4274

Community development, Economic development, Loan programs – Business, Rural areas.

For reasons set forth in this preamble, chapters XVIII and XLII, title 7, Code of Federal Regulations, are amended as follows:

CHAPTER XVIII – RURAL HOUSING SERVICE, RURAL BUSINESS-

COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE
AGENCY, DEPARTMENT OF AGRICULTURE

PART 1951 – SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart R – Rural Development Loan Servicing

§ 1951.851 [Amended]

2. Section 1951.851 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

3. Sections 1951.853, 1951.854, 1951.860, 1951.867, 1951.871, 1951.872, and 1951.877 are removed and reserved.

4. Section 1951.881 is amended by revising paragraph (a) to read as follows:

§ 1951.881 Loan servicing.

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations. Pre-existing documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement. Other than 7 CFR 1951.709(d)(1)(B)(iv), intermediaries receiving an unauthorized loan or using their revolving fund for unauthorized purposes will be serviced in accordance with 7 CFR part 1951, subpart O.

* * * * *

5. Section 1951.884 is revised to read as follows:

§ 1951.884 Revolved funds.

For ultimate recipients assisted by the intermediary with FmHA or its successor agency under Public Law 103-354, revolved funds derived from IRP funds shall be required to comply with the provisions of these regulations and/or loan agreement.

CHAPTER XLII – RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

Part 4274 – DIRECT AND INSURED LOANMAKING

6. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D – Intermediary Relending Program (IRP)

7. Section 4274.302 is amended by removing the last sentence in the definition of “Agency IRP loan funds,” removing the last sentence in the definition of “Revolved funds,” and removing the definition of “Rural area” and adding in its place a definition of “Rural or rural area” to read as follows:

§ 4274.302 Definitions and abbreviations.

(a) * * *

Rural or rural area. As described in 7 U.S.C. 1991(a)(13), as amended.

* * * * *

8. A new § 4274.304 is added to read as follows:

§ 4274.304 Prior loans.

Any loan made under this program prior to [insert date 90 days after date of publication in the Federal Register] may submit to the Agency a written request for an irrevocable election to have the loan serviced in accordance with this subpart.

9. Section 4274.331 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 4274.331 Loan limits.

(a) * * *

(3) * * *

(ii) The intermediary is promptly relending all collections from loans made from its IRP revolving fund in excess of what is needed for required debt service, reasonable administrative costs approved by the Agency, and a reasonable reserve for debt service and uncollectible accounts. The intermediary provides documentation to demonstrate that funds available for relending do not exceed the greater of \$150,000 or the total amount of loans closed during a calendar quarter on average, over the last 12 months.

* * * * *

10. Section 4274.332 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 4274.332 Post award requirements.

* * * * *

(b) * * *

(2) The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The annual budget should itemize cash income and cash out-flow. Projected cash income should consist of, but is not limited to, collection of

principal repayment, interest repayment, interest earnings on deposits, fees, and other income. Projected cash out-flow should consist of, but is not limited to, principal and interest payments, reserve for bad debt, and an itemization of administrative costs to operate the IRP revolving fund. Proceeds received from the collection of principal repayment cannot be used for administrative expenses. The amount removed from the IRP revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget.

* * * * *

(4) Any cash in the IRP revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients. Funds may not be used for any investments in securities or certificates of deposit of over 30-day duration without the concurrence of Rural Development. If funds in excess of \$250,000 have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to Rural Development unless Rural Development provides an exception to the intermediary. Any exception would be based on evidence satisfactory to Rural Development that every effort is being made by the intermediary to utilize the IRP funding in conformance with program objectives.

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11. Section 4274.338 is amended by revising paragraph (b)(9) and adding paragraph (b)(10) to read as follows:

§ 4274.338 Loan agreements between the Agency and the Intermediary.

* * * * *

(b) * * *

(9) If any part of the loan has not been used in accordance with the intermediary's work plan by a date 3 years from the date of the loan agreement, the Agency may cancel the approval of any funds not yet delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds delivered to the intermediary that have not been used by the intermediary in accordance with the work plan. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds. Regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(10) For IRP intermediaries, IRP funds in excess of \$250,000 that have not been used to make loans to ultimate recipients for 6 months or more will be returned to Rural Development unless Rural Development provides an exception to the intermediary. Any exception would be based on evidence satisfactory to Rural Development that every effort is being made by the intermediary to utilize the IRP funding in conformance with program objectives.

12. Section 4274.361 is amended by revising paragraph (a) to read as follows:

§ 4274.361 Requests to make loans to ultimate recipients.

(a) An intermediary may use revolved funds to make loans to ultimate recipients in accordance with §4274.314(b) without obtaining prior Agency concurrence. Prior Agency concurrence is required when an intermediary proposes to use Agency IRP loan funds to make a loan to an ultimate recipient.

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DOUGLAS J. O'BRIEN
Deputy Under Secretary
Rural Development

May 20, 2014
Date

MICHAEL T. SCUSE
Under Secretary
Farm and Foreign Agricultural Services

May 15, 2014
Date

[FR Doc. 2014-12633 Filed 06/02/2014 at 8:45 am; Publication Date: 06/03/2014]